

DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-190902

DATE: February 14, 1978

MATTER OF: Donald J. Jolovich - Real Estate Broker's  
Commission

- DIGEST:
1. Transferred employee seeks reimbursement of full amount of 7 percent real estate broker's commission paid when he sold his residence at his former duty station. Local HUD office states that 6 percent was prevailing rate. Although employee contends he was belatedly advised of HUD determination, he was on constructive notice of FTR provision that reimbursement of broker's fees may not exceed the prevailing rate which may be determined on basis of HUD statement. Claim is denied.
  2. Since FTR precludes reimbursement of insurance expenses, except for mortgage title insurance, employee may not be reimbursed for portion of real estate broker's fee attributable to insurance premium protecting purchaser.

This matter arises from a request for an advance decision submitted by Donald C. Gastiehr, an authorized certifying officer of the Department of Energy (DOE), regarding the propriety of reimbursing an additional 1 percent real estate broker's commission to a transferred employee.

Mr. Donald J. Jolovich was transferred from Las Vegas, Nevada, to Germantown, Maryland, is authorized on form HQ-279, Request and Authorization for Official Travel, dated June 14, 1974. Incident to the transfer, Mr. Jolovich sold his residence in Las Vegas, Nevada. He paid his broker a 7 percent commission of \$2,625, but was reimbursed for only 6 percent or \$2,250. He has claimed reimbursement for \$375, representing the additional 1 percent commission.

The DOE's refusal to reimburse in excess of 6 percent was based on a determination by the Department of Housing and Urban Development (HUD) regarding the customary and normal real estate commission charged by brokers in the Las Vegas area. By letter dated August 13, 1974, HUD stated it had found 6 percent to be the

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normal and customary commission and that the additional 1 percent charged by some brokers was an insurance premium paid by the seller to provide the buyer certain protections offered under several programs subscribed to by local realtors. The present record does not reveal whether the additional 1 percent paid by Mr. Jolovich was attributable to insurance premiums or simply a higher broker's commission. In his reclaim voucher Mr. Jolovich contends, however, that by the time he was notified of the contents of the HUD letter, he had already executed the 7 percent listing agreement. In addition, he states that when he discussed reimbursement of relocation costs with employees of the Organization and Personnel Division, he was not advised of any limitation.

The statutory authority for reimbursing real estate expenses is found in 5 U.S.C. 5724a(a)(4) (1970), which provides for reimbursement of expenses of the sale of the residence of the employee at the old station, but limits reimbursement for brokerage fees to the amount customarily charged in the locality. This provision has been implemented by the Federal Travel Regulations (FTR) FPMR 101-7, para. 2-6.2a (May 1973) which provides in part that:

"\* \* \* A broker's fee or real estate commission paid by the employee for services in selling his residence is reimbursable but not in excess of rates generally charged for such services by the broker or by brokers in the locality of the old official station. No such fee or commission is reimbursable in connection with the purchase of a home at the new official station." (Emphasis added.)

In considering similar claims, our Office has concluded that, in accordance with FTR para. 2-6.3c, where HUD is consulted to determine what charges are customary in the locality, the information provided by HUD creates a rebuttable presumption as to the prevailing commission rate. Without other evidence as to the prevailing rate, the presumption created by the HUD determination must stand and is controlling. See Matter of Mark L. Croeschen, B-186741, November 30, 1976 and Matter of Ronald K. Arvo, B-182850, July 14, 1976. In the present case, Mr. Jolovich does not contend that 7 percent was the prevailing rate and has, therefore, presented no evidence by which the presumption may be rebutted.

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Although the Personnel Division of Mr. Jolovich's office may have belatedly informed him of the prevailing commission rate, such delay does not form a basis for liability of the United States for payment of the additional 1 percent. Employees are on constructive notice that reimbursement of broker's fees may not exceed the prevailing rate which may be determined on the basis of information supplied by HUD. Cf. B-179696, March 18, 1974; B-177246, January 3, 1973; and B-173927, October 27, 1971.

Accordingly, Mr. Jolovich may not be reimbursed for the broker's commission in an amount exceeding 6 percent of the sale price.

The HUD letter of August 13, 1974, raises the question of whether the 1 percent additional fee is a broker's fee. The HUD states that the 1 percent is considered an insurance premium paid by the seller to protect the purchaser. As to insurance premiums, FTR para. 2-6.2d provides, in pertinent part, as follows:

"d. Miscellaneous expenses. \* \* \* The cost of a mortgage title policy paid for by the employee on a residence purchased by him is reimbursable but costs of other types of insurance paid for by him, such as an owner's title policy, a 'record title' policy, mortgage insurance, and insurance against damage or loss of property, are not reimbursable items of expense. \* \* \*"

In Matter of Vincent A. Crovetti, B-189662, October 4, 1977, we concluded that the above provision precludes the reimbursement of insurance expenses, except for mortgage title policies to the buyer. Therefore, the insurance expenses here in question may not be reimbursed to the seller.

Accordingly, there is no legal authority under which Mr. Jolovich may be reimbursed the additional 1 percent claimed. The reclaim voucher, therefore, may not be certified for payment.

Deputy

*R. K. 114*  
Comptroller General  
of the United States